



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2012-0876]

RIN 1625-AA11

Regulated Navigation Area - Weymouth Fore River, Fore River Bridge Construction, Weymouth and Quincy, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary regulated navigation area (RNA) on the navigable waters of Weymouth Fore River in the vicinity of the Fore River Bridge (Mile 3.5) between Weymouth and Quincy, MA. This rule will place temporary speed, wake, and entry restrictions on vessels during bridge replacement operations. This rule is necessary to provide for the safety of life in the in the vicinity of the Fore River Bridge during its construction.

DATES: This rule is effective from [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] until December 31, 2017.

ADDRESSES: Documents mentioned in this preamble are part

of docket USCG-2012-0876. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" Box and click "SEARCH." Click on Open Docket Folder on the line associated with the rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation, West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this Final rule, call or e-mail Chief Petty Officer Craig D. Lapiejko, Waterways Management Division, U.S. Coast Guard First District, 617- 223-8351, e-mail Craig.D.Lapiejko@uscg.mil or, Mr. Mark Cutter, Coast Guard Sector Boston Waterways Management Division, telephone 617-223-4000, e-mail Mark.E.Cutter@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

| | |
|------|---------------------------------|
| COTP | Captain of the Port |
| DHS | Department of Homeland Security |
| FR | Federal Register |

RNA Regulated navigation area

A. Regulatory History and Information

On Friday, February 22, 2013 the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Regulated Navigation Area-Weymouth Fore River, Fore River Bridge Construction, Weymouth and Quincy, MA" in the Federal Register (78 FR 12260). No comments were received. No public meeting was requested of the Coast Guard, and none was held.

B. Basis and Purpose

The Fore River Bridge carries State Road 3A over the Weymouth Fore River from Quincy to Weymouth MA. In the 1990's, the original Fore River Bridge, which was built in 1936, was found to be deteriorated beyond the point of restoration. In 2003, a temporary bridge was built, and the old Fore River Bridge was removed. This temporary bridge will reach the end of its useable life span in 2018, and thus, the Massachusetts Department of Transportation (Mass-DOT) is taking current steps to have the temporary bridge removed and a new vertical replacement bridge constructed.

The new Fore River Bridge will be located in the approximate location of the old Fore River Bridge. Bridge construction has already started and is expected to be done

in 2017. As explained in the NPRM (78 FR 12260), the Coast Guard has consulted with J.F. White-Skanska Koch, the company responsible for the bridge construction project, and determined that certain aspects of the project will require closing the waterway.

Specifically, the Coast Guard anticipates that the construction project will create serious navigational hazards over a few days in the winter of 2014-2015 while the new bridge lift span system is delivered and installed via barge. Also, the Coast Guard expects that the construction project will create serious navigational hazards during two separate four to six day periods in the fall of 2015 and the winter of 2016 while portions of the temporary bridge are removed.

Because of the aforementioned navigational hazards, the Coast Guard's First District Commander has determined it necessary to establish, pursuant to his authority under the Ports and Waterways Safety Act, this RNA.

C. Discussion of Rule

For all of the reasons discussed above, the Coast Guard's First District Commander is establishing this RNA. This establishes speed, wake, and entry restrictions on vessels in the vicinity of the Fore River Bridge when

necessary for the safety of vessels and workers during construction work in the channel.

This RNA will be effective until December 31, 2017. Although this rule will be effective continuously, the RNA will be enforced only intermittently. As discussed previously, the Coast Guard anticipates enforcing this RNA over a few days in the winter of 2014-2015 and during two separate periods in the fall of 2015 and the winter of 2016. The Coast Guard may enforce this RNA during other periods when necessary to mitigate navigational risks posed by the ongoing construction project.

The Coast Guard will advertise the specific times and dates over which this RNA will be enforced in the Federal Register via a Notice of Enforcement. Also, the Coast Guard expects to publicize the enforcement times and dates via Local Notice to Mariners or Broadcast Notice to Mariners.

The RNA will include all U.S. navigable waters surrounding the Weymouth Fore River bridge from surface to bottom, within the following points (NAD 83): from a line extending from 42°14'46.392" N, 070°58'2.964" W, thence along a line 120°T to 42°14'44.376" N, 070°57'52.992" W, thence south along the shoreline to 42°14'35.052" N, 070°57'59.364" W, thence along a line 291°T to 42°14'38.58"

N, 070°58'15.348" W, thence north along the shoreline to the first point.

During enforcement periods, entry into, anchoring, or movement within the RNA, is prohibited without authority of the Coast Guard's First District Commander, the Captain of the Port Boston (COTP), or the COTP's designated representative. Vessel operators desiring to enter or operate within the RNA during an enforcement period shall contact the COTP or the designated on-scene representative via VHF channel 16 or 617-223-3201 (Sector Boston command Center) to obtain permission.

Any vessels allowed to enter the RNA during an enforcement period must operate at "Slow-No Wake" speed, must produce no more than a minimum wake, and must not operate at greater than three knots unless a higher minimum speed is necessary to maintain steerageway. In no case may the wake produced by a vessel within the RNA be such that it creates a danger of injury to persons or damage to vessels or structures of any kind.

All persons and vessels permitted to operate within the RNA during periods of enforcement must comply with all orders and directions from the First District Commander, the COTP, or the COTP's designated representative. Likewise, such persons and vessels must proceed as directed

when hailed by a Coast Guard vessel via siren, radio, flashing light or other means.

Notwithstanding anything contained in this rule, the Rules of the Road (33 CFR part 84 - Subchapter E, inland navigational rules) are still in effect and must be strictly adhered to at all times.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The Coast Guard has determined that this rulemaking is not a significant regulatory action because this RNA will only be enforced when construction operations require such. Thus, restrictions on vessel traffic will be limited in

duration. Furthermore, the size of the RNA was designed to minimize impact on vessel traffic, and thus, the RNA covers only a small portion of the navigable waterways. Moreover, entry into the RNA during enforcement periods may be authorized by the COTP Boston or designated representative. Finally, the Coast Guard will provide the boating public with notice of enforcement periods by publishing a Notice of Enforcement (NOE) in the Federal Register and through other appropriate means, such as publication in the Local Notice to Mariners and via Broadcast Notice to Mariners. For all of these reasons, the Coast Guard expects that this RNA will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received

no comments from the Small Business Administration on this rule.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit, anchor or moor within the regulated areas during a vessel restriction period. However, the Coast Guard concludes that this RNA will not have a significant economic impact on a substantial number of small entities for all of the reasons discussed in the REGULATORY PLANNING AND REVIEW section above.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

4. Collection of Information

This rule calls for no new collection of information

under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) .

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section above to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the

aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "Significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions that do not individually or cumulatively have a significant

effect on the human environment. This rule involves the establishment of a regulated navigation area and thus, is categorically excluded from further review under, paragraph 34(g) of figure 2-1 of the Commandant Instruction. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T01-0876 to read as follows:

§ 165.T01-0876 Regulated Navigation Area - Weymouth Fore River, Fore River Bridge Construction, Weymouth and Quincy, MA.

(a) Location. The following is a regulated navigation area: all U.S. navigable waters surrounding the Weymouth Fore River bridge (Mile 3.5), between Weymouth and Quincy, MA; from surface to bottom, within the following points (NAD 83): from a line extending from 42°14'46.392" N, 070°58'2.964" W, thence along a line 120°T to 42°14'44.376" N, 070°57'52.992" W, thence south along the shoreline to 42°14'35.052" N, 070°57'59.364" W, thence along a line 291°T to 42°14'38.58" N, 070°58'15.348" W, thence north along the shoreline to the first point.

(b) Effective and Enforcement Periods. This rule is effective from **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]** until December 31, 2017. This RNA will be enforced intermittently, depending on risks posed by the ongoing construction project. Periods of enforcement will be published in the Federal Register via a Notice of Enforcement and may be publicized via Local Notice to Mariners or Broadcast Notice to Mariners.

(c) Regulations. (1) The general regulations contained in 33 CFR 165.10, 165.11, and 165.13 apply.

(2) In accordance with the general regulations, entry into, anchoring, or movement within the RNA, during periods of enforcement, is prohibited unless authorized by the First District Commander, the Captain of the Port Boston (COTP), or the COTP's designated representative.

(3) During periods of enforcement, entry and movement within the RNA is subject to a "Slow-No Wake" speed limit. Vessels within the RNA may not produce more than a minimum wake and may not attain speeds greater than three knots unless a higher minimum speed is necessary to maintain steerageway when traveling with a strong current. In no case may the wake produced by a vessel within the RNA be such that it creates a danger of injury to persons or damage to vessels or structures of any kind.

(4) During periods of enforcement, all persons and vessels permitted to operate within the RNA must comply with all orders and directions from the First District Commander, the COTP, or the COTP's designated representative.

(5) During periods of enforcement, all persons and vessels permitted to operate within the RNA must proceed as directed when hailed by a Coast Guard vessel by siren, radio, flashing light or other means.

(6) Vessel operators desiring to enter or operate within the RNA during an enforcement period shall contact the COTP or the designated on-scene representative via VHF channel 16 or 617-223-3201 (Sector Boston command Center) to obtain permission.

(7) Notwithstanding anything contained in this rule, the Rules of the Road (33 CFR part 84 - Subchapter E, inland navigational rules) are still in effect and must be strictly adhered to at all times.

Dated: September 13, 2013

D. B. Abel
Rear Admiral, U.S. Coast Guard
Commander, First Coast Guard District

[FR Doc. 2013-23523 Filed 09/25/2013 at 8:45 am;
Publication Date: 09/26/2013]